

SANTA FE COUNTY

Ordinance No. 1988- 3

600664

AN ORDINANCE WHICH REGULATES THE MANUFACTURE, TRANSPORTATION, STORAGE, SALE AND USE OF FIREWORKS WITHIN THE COUNTY OF SANTA FE, NEW MEXICO.

THIS ORDINANCE

1. DEFINES THE TYPES OF FIREWORKS WHICH MAY BE MANUFACTURED, STORED SOLD AND USED;
2. PROVIDES FOR LICENSING AND FEES;
3. ESTABLISHES SAFETY REQUIREMENTS FOR STORAGE, SALE AND USE;
4. ESTABLISHES PERIODS FOR RETAIL SALE; AND
5. ESTABLISHES PENALTIES FOR VIOLATIONS

THE SANTA FE BOARD OF COUNTY COMMISSIONERS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1.0 DEFINITIONS

- A. Manufacturer - Person firm or corporation engaged in the manufacture of fireworks.
- B. Distributor - Person, firm or corporation selling fireworks to wholesale (jobbers) and retailers for resale.
- C. Wholesaler (Jobber) - Person, firm or corporation purchasing fireworks for resale to retailers.
- D. Retailer - Person, firm, or corporation purchasing fireworks for resale to consumers.
- E. Importers - 1. Person, firm, or corporation importing fireworks from a foreign country; or
2. Person, firm, or corporation bringing fireworks or causing fireworks to be brought within the jurisdiction of this Act for subsequent sale.

ORDINANCE NO. 1988-_____

F. Fireworks - Any composition or device for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks and Special classified in the Act as Common Fireworks and Special Fireworks, as defined by the U.S. Department of Transportation (CFR Title 49-Transportation, Parts 173.88(d) 173.100(r). Exception: The following items are not considered fireworks under the provisions of these regulations: model rockets, toy pistol caps, emergency signal flares, and matches.

G. Common fireworks - Small fireworks, designed primarily to produce visible effects by combustion, that must comply with the construction, chemical composition, and labeling regulations promulgated by the U.S. Consumer Product Safety Commission (CFR Title 16-Commercial Practices, Part 1507). Some small devices designed to produce an audible effect are included, such as whistling devices, ground devices containing 50mg or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulphur, and potassium nitrate are not considered as designed to produce an audible effect.

Common fireworks include the following:

1. Ground and Hand-held Sparkling Devices

- a. Dipped Stick, Wire Sparkler or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition may not exceed 100 grams per item. Those devices containing any chlorate or perchlorate salts are not to exceed 5 grams in total composition per item. Wire sparklers which contain no magnesium and which contain less than 100 grams of composition per item are not included in this category, in accordance with the regulations of the U.S. Department of Transportation.
- b. Cylindrical Fountain-Cylindrical tube not exceeding 3/4 inch in inside diameter containing up to 75 grams of pyrotechnic composition. Fountains produce a shower of color and sparks upon ignition, and sometimes a whistling effect. Cylindrical fountains may contain a spike to be inserted in the ground (spike fountain), a wooden or plastic base to be placed on the ground (base fountain), or a wooden handle or cardboard handle for items designed to be hand-held (handle fountain).

ORDINANCE NO. 1988-____

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- 3 c. Cone Fountain-Cardboard or heavy paper cone containing up to
- 4 50 grams of pyrotechnic composition. The effect is the same
- 5 as that of a cylindrical fountain.
- 6
- 7 d. Illuminating Torch-Cylindrical tube containing up to 100
- 8 grams of pyrotechnic composition. Upon ignition, colored
- 9 fire is produced. These may be either spike, base, or
- 10 handle-type devices.
- 11
- 12 e. Wheel-Pyrotechnic device attached to a post or tree by means
- 13 of a nail or string. Wheel contains up to six "driver"
- 14 units-tubes not to exceed 1/2-inch in inside diameter that
- 15 may contain up to 60 grams of composition per driver unit.
- 16 Upon ignition, the wheel revolves, producing a shower of
- 17 color and sparks and sometimes a whistling effect.
- 18
- 19 f. Ground Spinner-Small device similar to wheels in design and
- 20 effect placed on the ground and ignited. A shower of sparks
- 21 and color is produced by the spinning device.
- 22
- 23 g. Flitter Sparkler-Narrow paper tube filled with pyrotechnic
- 24 composition that produces color and sparks upon ignition.
- 25 These devices do not use a fuse for ignition. The paper at
- one end of the tube is ignited to make the device function.

2. Aerial Devices

- 16 a. Stick-type rocket-Tube not less than 1/4-inch inside diameter
- 17 that may contain up to 20 grams of composition (propellant
- 18 plus pyrotechnic effect). The inside diameter of the tube
- 19 containing the propellant may not exceed 1/2-inch. Stick
- 20 rockets contain a wooden stick for guidance and stability and
- 21 rise into the air upon ignition.
- 22
- 23 b. Missile-type rocket-Device similar to a stick-type rocket in
- 24 size, composition, and effect that uses fins rather than a
- 25 stick for guidance and stability.
- 26
- 27 c. Helicopter, Aerial Spinner-A tube not exceeding 1/2 inch
- 28 inside diameter that may contain up to 20 grams of
- 29 pyrotechnic composition. Some type of propeller or blade
- 30 device is attached, and upon ignition the spinning device
- 31 lifts into the air. A visible or audible effect may be
- 32 produced at the height of flight.

ORDINANCE

- d. Starlight candle-heavy paper or cardboard tube with ground spike not exceeding 3/8-inch in inside diameter that contains up to 200 grams of pyrotechnic composition. Upon ignition, up to ten "stars" (see pellets of pressed pyrotechnic composition) are individually expelled at several-second intervals.
- e. Mine, Shell-Heavy cardboard or paper tube up to 2 1/2 inches in inside diameter with a wooden or plastic base attached, containing up to 40 grams of pyrotechnic composition. Upon ignition, "stars" (see starlight candle) firecrackers (see "C. Ground Audible Devices"), whistles parachutes, or combinations of these effects are propelled into the air, with the tube remaining on the ground.

3. Ground Audible devices

- a. Firecracker-Small paper-wrapped or cardboard tube that may not contain more than 50 mg of pyrotechnic composition and may not exceed 7/8-inch long by 1/6-inch diameter. Noise, accompanied by a flash of light, is produced upon ignition.
- b. Chaser-Small paper or cardboard tube that travels along the ground upon ignition. A whistling effect is often produced, and a small noise may be produced. The explosive composition used to create the noise may not exceed 50 mg.

4. Combination Items

Combination items consist of fireworks and/or devices containing combinations of two or more of the permissible effects described herein.

5. Novelties and Trick Noisemakers

Items listed in this section are not classified as common fireworks by the U.S. Department of Transportation:

1. Snakes, Glow Worms-Pressed pellet of pyrotechnic composition that produces a snake-like ash upon burning. The ash expands in length as the pellet burns. These devices may not contain mercuric thiocyanate.
2. Smoke Device-Tube or sphere containing pyrotechnic composition that produces white or colored smoke upon ignition as the primary effect.

3. Wire Sparkler-Wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. These items may not contain magnesium and must not exceed 100 grams of composition per item. Devices containing any chlorate or perchlorate salts may not exceed 5 grams of composition per item.

4. Trick Noisemaker-Item that produces a small report intended to surprise the user. These devices include:

a. Party Popper-Small plastic or paper item containing not in excess of 16 mg of explosive composition that is friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report (noise).

b. Booby Trap, Pulling Fireworks-Small tube with string protruding from both ends, similar to a party popper in design. The ends of the string are pulled to ignite the friction sensitive composition, producing a small report.

c. Snapper-Small paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes producing a small report.

d. Trick Match-Kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match, a small report or a shower of sparks is produced.

e. Cigarette Load-Small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one of the pegs, a small report is produced.

f. Auto burglar alarm-Tube which contains pyrotechnic composition that produces a loud whistle and/or smoke when ignited. A small quantity of explosive, not exceeding 50 mg, may also be used to produce a small report. A squib is used to ignite the device.

H. Special fireworks-Larger fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This definition includes but is not limited to firecrackers containing more than 130 mg of explosive composition, aerial shells containing more than 40 grams of

ORDINANCE NO. 1988-____

pyrotechnic composition, and other exhibition display items that exceed the limits for classification as common fireworks.

I. Pyrotechnic composition-Mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. Pyrotechnic compositions will not explode upon ignition unless severely confined.

J. Explosive composition-Chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited.

K. Permissible fireworks-Fireworks legal for sale and use in the County of Santa Fe, New Mexico under the provisions of this Act.

END DEFINITIONS

ORDINANCE NO. 1988-____

Section 1.1 PERMISSIBLE FIREWORKS

A. It shall be unlawful for any individual, firm partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use, within the County of Santa Fe, New Mexico any fireworks other than the permissible fireworks herein enumerated.

B. It shall be unlawful for any individual to possess or use within the County of Santa Fe, New Mexico any fireworks other than the permissible fireworks herein enumerated.

C. Permissible fireworks for sale to the general public as that term is used in this Ordinance shall be understood to mean the following:

1. Ground and Hand-held Sparkling Devices.
2. Novelties and Trick Noisemakers

Section 1.2 FIREWORKS-PUBLIC DISPLAY

A. The County Fire Marshal shall enforce the National Fire Protection Association Standard NFPA 1123-1982 edition, adopted, and incorporated herein by reference (see Appendix A) in the granting of permits for supervised and controlled public displays of fireworks by the County, a civic organization, amusement park or other organization or group of individuals approved by the County Fire Marshal. Such permits shall be granted on application to the County Fire Marshal, approval by the governing body and the filing of a bond or proof of liability insurance in an amount which will be acceptable to the County Fire Marshal by the applicant as herein provided. Every such display shall be handled by a competent operator duly approved by the County Fire Marshal and shall be of such composition, character and so located, discharged or fired, as, to not be hazardous to property or endanger life.

B. Application for permits shall be made in writing at least thirty (30) days in advance of the date of the display. After the permit has been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No such permit granted shall be transferable.

June 14th

ORDINANCE NO. 1988-____

C. Before any permit for fireworks display shall be issued, the applicant shall furnish proof of financial responsibility by either posting a bond or by providing proof of liability insurance specifically covering the display being applied for in the amount of not less than \$500,000.00 (Five hundred Thousand dollars) to satisfy any claims for damages to property or personal injuries arising out of any act or omission on the part of the applicant or any agent or employee.

D. Any fireworks that remain unfired after an approved display is concluded shall be immediately disposed of in a manner safe for the particular type of fireworks as approved by the County Fire Marshal.

Section 2.0 ADMINISTRATION AND LICENSE FEES

A. The Fire Marshal shall be charged with the responsibility of enforcing this Ordinance as it pertains to the regulation of manufacturers, distributors, wholesalers, importers and retailers; review of applications; collection of fees; and inspection of storage and sale sites. All license applications shall be submitted to the Santa Fe County Fire Marshal.

B. All licenses shall be for a period of one year, beginning on March 1st. the license shall state the place of manufacture, of storage or sale, and no other location may be so used. Applications for licenses shall be made to the Santa Fe County Fire Marshal, and shall be for the amount indicated below:

Manufacturer	\$1,000.00
Distributor	\$ 250.00
Wholesaler	\$ 250.00
Importer	\$ 250.00
Retailer	\$ 50.00 per day of sales per site.

ORDINANCE NO. 1988-_____

C. The County Fire Marshall or a deputy sheriff may inspect any business manufacturing, storing or selling fireworks for purposes of determining whether a license has been issued and posted; whether the manufacture, storage or sale are in compliance with this ordinance or state law; and whether the manufacture, storage, or sale are being otherwise conducted in a safe manner. Refusal to permit such an inspection shall be grounds for immediate revocation of a license. The County Fire Marshall is authorized to issue written directives as to safety measures which must be complied with as soon as possible.

D. If the County Fire Marshall determines that an eminent danger exists to person or property as a result of unsafe practices related to the manufacture, storage or sale of fireworks, he may immediately suspend a license and order that the manufacturer, storage, or sale cease; provided that an administrative hearing is conducted within forty-eight hours.

Section 3.0 SAFETY REQUIREMENTS**Retail Sale**

A. No permissible fireworks may be sold without the securing of a retail license. A license must be on display at the location where the retail sale takes place.

B. It shall be unlawful to offer for sale or to sell any fireworks to children under the age of sixteen (16) years unless he is accompanied by a parent or guardian.

C. It shall be unlawful to offer for sale or to sell any fireworks to any intoxicated person.

D. No fireworks shall be sold or discharged within one hundred (100) feet of any church, hospital or school building.

E. No fireworks shall be stored, kept, sold, or discharged within fifty (50) feet of any gasoline pump, gasoline filling station, gasoline bulk station, or any building in which gasoline or volatile liquids are sold in quantities in excess of one (1) gallon except where such liquids are handled in sealed containers only.

ORDINANCE NO. 1988-____

F. At all places where fireworks are sold or displayed, the words "NO SMOKING" must be conspicuously posted in letters at least four (4) inches in height.

G. No fireworks shall be discharged within one hundred (100) feet of any fireworks retail sales location.

H. No person shall ignite or discharge any fireworks within or throw the same from a motor vehicle while within, nor shall any person place or throw any ignited article of fireworks into or at such a motor vehicle, or at or near any person or group of people.

Section 3.1 PROTECTED FUSES

A. In retail sales locations, any fireworks devices that are readily accessible to handling by consumers or purchasers must have their fuses protected in such a manner as to protect against accidental ignition of an item by a spark, cigarette ash, or other ignition source.

B. Applicants for permits shall furnish a bond of not less than one thousand dollars (\$1,000.00) wherein the applicant agrees to comply with all aspects of the sale and handling of Common fireworks as set forth in this Ordinance. The applicant acknowledges that failure to comply with all aspects of this Ordinance shall constitute a forfeiture of the bond in whole or in part so as to satisfy the penalty section of this ordinance. The County or any other governmental entity shall not be required to file a bond.

Section 4.0 DATES OF POSSESSION AND SALE

Any permit granted to a retailer under Section 2.0 of this Ordinance shall authorize the possession of permissible fireworks for the period of June 10th through July 15th of each year and the sale and display of such fireworks for the period of June 25th through July 5th of each year.

ORDINANCE NO. 1988-____

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Section 5.0 PENALTIES

A. Any individual, firm, partnership, or corporation who violates any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$300.00 or imprisonment for not more than 90 days, or both. Each day a violation exists shall constitute a separate offense.

B. The County Fire Marshal is authorized to cancel or suspend any license where, after an administrative hearing before a person designated by the County Manager it is determined that a provision of this ordinance has been violated.

The County Fire Marshal shall immediately seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, stored or held if the owner of the fireworks is found to be in possession of any fireworks that are not permissible fireworks as outlined in this Ordinance.

Section 6.0 FUNDS

A. All monies derived from the license fees provided by the Ordinance shall be paid into the Fire Safety Fund by the Fire Marshal. Upon proper requisition to the Purchasing Agent of Santa Fe County, such funds may be appropriated by the Board of County Commissioners as required for the capital outlay and operational expenses of the Santa Fe County Fire Marshal's Office and the Santa Fe County Fire Departments.

Section 7.0 CONFLICT OF AUTHORITY

A. If any portion of this Ordinance is held unconstitutional, or invalid, such holding shall not invalidate the remainder thereof.

B. Any other Ordinance in conflict herewith is hereby repealed to the extent of the conflict.

C. If any other provision of law provides for penalties which are greater than those provided herein, such other provision shall apply.

ORDINANCE NO. 1988-

Section 8.0 EFFECTIVE DATE

This Ordinance shall be effective thirty (30) days after it is adopted and filed in the office of the Santa Fe County Clerk.

PASSED, APPROVED, AND ADOPTED ON THIS 14 DAY OF March, 1988.

SANTA FE BOARD OF COUNTY COMMISSIONERS

Antonio F. Ortega, Chairman

CERTIFICATE

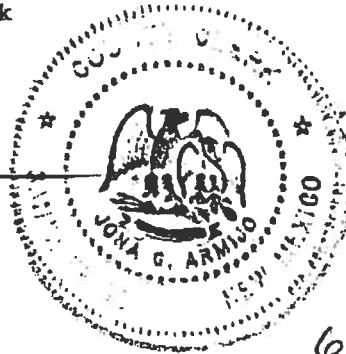
I, THE UNDERSIGNED, COUNTY CLERK DO HEREBY CERTIFY THAT THE ABOVE IS THE ORDINANCE WHICH WAS DULY ADOPTED BY THE SANTA FE BOARD OF COUNTY COMMISSIONERS AT A REGULAR MEETING AND WHICH WAS FILED IN THE OFFICE OF THE COUNTY CLERK ON THE 14 DAY OF MARCH, 1988.

SANTA FE COUNTY CLERK

Jona G. Armijo, County Clerk

APPROVED AS TO LEGAL FORM:

Campos & Sanchez, P.A.
County Attorney



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COUNTY OF SANTA FE)
STATE OF NEW MEXICO)

I hereby certify that this instrument was filed for record on the 16 day of MAR, A.D. 19 88 at 4:08 o'clock P m. and was duly recorded in book 606, page 664-684 of the records of Santa Fe County.

Witness my Hand and Seal of Office
Jona G. Armijo
County Clerk, Santa Fe County, N.M.

Joyce Medina
Deputy Clerk